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FEDERAL ELECTION COMMISSION999 E Street, N.W.
Washington, D.C. 20463**FIRST GENERAL COUNSEL'S REPORT****SENSITIVE**AUDIT REFERRAL: 03-03
DATE REFERRED: April 1, 2003
DATE ACTIVATED: October 31, 2003EXPIRATION OF STATUTE OF LIMITATIONS:
December 14, 2003 – December 26, 2005¹**SOURCE:** AUDIT REFERRAL**RESPONDENTS:** Keyes 2000, Inc. and William Leo Constantine, as Treasurer**RELEVANT STATUTES
AND REGULATIONS:**2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 441g
2 U.S.C. § 432(c)
2 U.S.C. § 432(h)
11 C.F.R. § 110.4(c)(3)**INTERNAL REPORTS CHECKED:** Audit Documents
Disclosure Reports**FEDERAL AGENCIES CHECKED:** None**I. INTRODUCTION**

The Commission audited Keyes 2000, Inc. and William Leo Constantine, as Treasurer, ("the Committee") pursuant to 26 U.S.C. § 9038(a). On December 12, 2002, the Commission approved the Report of the Audit Division on Keyes 2000, Inc., finding that the Committee: (1) received excessive contributions, including \$8,003 related to

¹ The range of dates on which the statute of limitations expires for the violations in this matter are as follows: January 15, 2004 – December 26, 2005 for the receipt of excessive contributions (the statute will not begin to run on the majority of these violations until December 2004); December 14, 2003 – June 30, 2005 for the failure to dispose of excessive anonymous cash contributions (the statute will not begin to expire on the vast majority of these violations until July 2004); July 2, 2004 – December 6, 2005 for cash disbursements; and January 15, 2005 – October 17, 2005 for stale-dated checks.

1 stale-dated checks; (2) failed to dispose of anonymous cash contributions in excess of
2 \$50; and (3) made cash disbursements in excess of \$100.² The Audit Division referred
3 this matter to the Office of General Counsel for a possible compliance action. *See*
4 Attachment 1.³

5 **II. FACTUAL AND LEGAL ANALYSIS**

6 **A. Excessive Contributions**

7 **1. Sample-Based Excessive Contributions**

8 The Audit Division concluded, primarily through the use of generally accepted
9 statistical sampling techniques, that the Committee received \$168,200 in excessive
10 contributions. *See* Attachment 1. This amount included \$72,914 in excessive
11 contributions that were "curable" under the new rules for presumptive reattribution, but
12 had not been resolved pursuant to 11 C.F.R. § 103.3(b)(3).⁴ Based upon the information

² All of the activity addressed in this Report occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended (the "Act"), herein are to the Act as it read prior to the effective date of BCRA.

³ This Report does not address the remaining findings contained in the audit, which involve the potential repayment of public funds to the United States Treasury. The repayment findings are: (1) non-qualified campaign expenses due to insufficient documentation; (2) non-qualified campaign expenses due to the use of cash; (3) the use of public funds to defray costs associated with continuing to campaign; and (4) non-qualified campaign expenses due to improper winding down expenses. On the basis of these findings, the Commission made an initial determination that the Committee must repay \$104,448 to the United States Treasury. On March 10, 2003, the Committee requested an administrative review of this determination pursuant to 11 C.F.R. § 9038.2(c)(2). On March 8, 2004, the Commission made a final determination that Alan Keyes and Keyes 2000, Inc. must repay \$75,841 to the United States Treasury. *See* LRA 570, Statement of Reasons in Support of Repayment Determination for Keyes 2000, Inc.

⁴ The Audit staff evaluated the \$168,200 in excessive contributions using the Commission's new rules for presumptive reattribution and redesignation of excessive contributions. Under the new rules, the Committee could have reattributed the excessive portion of a contribution to any person whose name is imprinted on the check, or redesignated the excessive portion to another election in the election cycle without a signed consent. *See* 67 Fed. Reg. 69,928 (Nov. 19, 2002). Based upon these rules, the Audit Report contained a recommendation that the Committee make a payment of \$95,286 (\$168,200 minus \$72,914 in curable excessive contributions) to the U.S. Treasury. To date, the Committee has failed to remit payment. The recommendation that the Committee pay \$95,286 to the U.S. Treasury is not a part of the Commission's repayment determination.

1 set forth in the audit referral, this Office recommends that the Commission find reason to
2 believe that Keyes 2000, Inc. and William Leo Constantine, as Treasurer, violated
3 2 U.S.C. § 441a(f) by knowingly accepting \$168,200 in excessive contributions.

4 With respect to the individual contributors who made the excessive contributions,
5 the Commission's practice has been to name as respondents only those individual
6 contributors who, after applying the new rules for presumptive redesignation and
7 reattribution of excessive contributions, still contributed more than twice the permissible
8 limit. *See, e.g.*, MUR 5356 (Bob Franks for U.S. Senate, Inc.). In this matter, the Audit
9 revealed one contribution that meets the threshold adopted by the Commission - a \$5,000
10 contribution made by Paul True. After applying the presumptive reattribution rule, Mr.
11 True's contribution exceeds the contribution limit by \$3,000. *See* 2 U.S.C.
12 § 441a(a)(1)(A). Accordingly, this Office recommends that the Commission find reason
13 to believe that Paul True violated 2 U.S.C. § 441a(a)(1)(A). However, given the
14 relatively small amount of the excessive contribution, this Office recommends that the
15 Commission send Mr. True an admonishment letter and take no further action.

16 **2. Stale-dated Checks**

17 During the audit, the Audit Division identified 27 stale-dated checks totaling
18 \$8,003 and, accordingly, recommended that the Committee make a payment of \$8,003 to
19 the United States Treasury. *See* 11 C.F.R. § 9038.6 (committee must pay to the United
20 States Treasury amount of outstanding checks to creditors or contributors that have not
21 been cashed).⁵ The stale-dated checks at issue represented attempted refunds of
22 excessive contributions. The Committee's failure to pay the United States Treasury an

⁵ Stale-dated checks are checks issued that were never negotiated.

1 amount equal to the stale-dated checks resulted in the Committee's receipt of excessive
2 contributions. *See* Explanation and Justification for 11 C.F.R. § 9038.6, 52 Fed. Reg.
3 20674 (June 3, 1987) (using the amount of outstanding checks could result in the
4 committee's receipt of a prohibited or excessive contribution). Accordingly, this Office
5 recommends that the Commission find reason to believe that Keyes 2000, Inc. and
6 William Leo Constantine, as Treasurer, violated 2 U.S.C. § 441a(f) by receiving \$8,003
7 in excessive contributions related to its stale-dated checks.⁶

8 **B. Excessive Anonymous Cash Contributions**

9 The Committee made 89 cash deposits in excess of \$50. *See* Attachment 1.
10 During the audit, the Committee claimed that none of these deposits include anonymous
11 cash contributions in excess of \$50, which would have required that the Committee
12 promptly dispose of the funds in accordance with 11 C.F.R. § 110.4(c)(3). According to
13 the Committee, each deposit consisted of cash contributions in amounts less than \$50.
14 To support this contention, the Committee submitted copies of the candidate's daily
15 schedules, candidate and staff travel itineraries, and various media accounts of the
16 candidate's appearances and campaign fundraising efforts. The Committee claimed that
17 this information matched each cash contribution to the candidate's daily schedules, staff
18 travel itineraries, and campaign events where small donor fundraising solicitations were
19 made. Attachment 1, at 5.

20 It appears appropriate to accept the Committee's claim in instances where the
21 Committee's documentation complied with the record-keeping requirements for
22 anonymous cash contributions in amounts of \$50 or less. Under Commission regulations,

⁶ The recommendation that the Committee pay \$8,003 to the U.S. Treasury is not a part of the Commission's repayment determination

1 political committees are required to keep an account of all contributions received by any
2 reasonable accounting procedure. *See* 11 C.F.R. § 102.9(a). There are at least two
3 reasonable accounting procedures for contributions of \$50 or less: first, the committee
4 may keep an account of the name and address of each contributor and the date and
5 amount of his or her contribution, as required for contributions in excess of \$50, *see*
6 2 U.S.C. § 432(c)(2); or, in the alternative, a committee may record the name of the
7 event, the date contributions were received for the event, and the total amount of
8 contributions received on each day of that event. *See* Advisory Opinion 1980-99.

9 The documentation submitted by the Committee during the audit indicates that the
10 Committee substantially complied with the Commission's record-keeping requirements
11 with respect to a majority of the cash deposits: that is, the Committee maintained an
12 account of the total amount of the cash received, the date the receipts were deposited, and
13 the general source of the funds or the fundraising event to which they were associated.

14 At least 35 deposits totaling \$15,013, however, were inadequately documented.

15 Attachment 1, at 6. Specifically, thirty of the deposits were not made within ten days of
16 the associated event pursuant to 11 C.F.R. § 103.3(a); the treasurer associated several
17 large currency deposits with events that occurred up to 66 days after the deposits were
18 made; explanations for other currency deposits referred to unverifiable events; and the
19 remaining cash deposits were attributed to "white mail"⁷ where no attempt was made to
20 identify how many contributions each currency deposit represented. *Id.* Because the
21 Committee did not provide adequate documentation regarding the general source of the

⁷ "White mail" refers to mail that contains contributions that the recipient committee cannot definitively associate with a particular solicitation or program.

1 cash or event at which the cash was received, it appears that the Committee failed to
2 adhere to a reasonable accounting method for contributions under \$50 as required by
3 2 U.S.C. § 432(c).

4 Moreover, given the Committee's failure to produce adequate documentation
5 during the audit to support its contention that each of the remaining 35 cash deposits was
6 made up of individual contributions of less than \$50, *see* Attachment 1, at 6, and given
7 the total dollar amount at issue, *i.e.*, \$15,013, it appears likely that the deposits contained
8 individual contributions in excess of \$50. There is no information available to suggest
9 that the Committee had a practice or procedure in place for disposing of anonymous cash
10 contributions in excess of \$50 and no indication in any of the Committee's records or
11 statements that they ever disposed of excessive cash contributions.

12 Based on the foregoing, this Office recommends that the Commission find reason
13 to believe that Keyes 2000, Inc. and William Leo Constantine, as Treasurer, violated
14 11 C.F.R. § 110.4(c)(3) by failing to properly dispose of anonymous cash contributions in
15 excess of \$50.⁸ This Office also recommends that the Commission find reason to believe
16 that Keyes 2000, Inc. and William Leo Constantine, as Treasurer, violated 2 U.S.C.
17 § 432(c) by failing to keep adequate records of anonymous cash contributions.

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⁸ The Audit Report approved by the Commission recommended that the Committee make a payment of \$15,013 to the United States Treasury as a result of its failure to dispose of excessive anonymous cash contributions. To date, the Committee has failed to remit payment. The Committee's obligation to pay \$15,013 to the U.S. Treasury is not part of the Commission's repayment determination.

1 **C. Cash Disbursements in Excess of \$100**

2 The Audit Referral identified \$107,863 in cash disbursements that were
3 inadequately documented and exceeded \$100 per transaction in violation of 2 U.S.C.
4 § 432(h)(2). Of this amount, \$27,365 comprised debit card transactions, \$3,450 of which
5 exceeded \$100 only by the bank ATM transaction fee of \$1.00 or \$1.50. Since these
6 debit card transactions appear to be two separate transactions – one that resulted in \$100
7 to the Committee and the other that resulted in \$1.00 or \$1.50 to the bank – it may be
8 appropriate to reduce the amount of cash disbursements in excess of \$100 to \$104,413
9 (\$107,863 minus \$3,450). Accordingly, this Office recommends that the Commission
10 find reason to believe that Keyes 2000, Inc. and William Leo Constantine, as Treasurer,
11 violated 2 U.S.C. § 432(h) by making \$104,413 in cash disbursements in excess of \$100.⁹

12 **III. CONCILIATION AND CIVIL PENALTIES**

13 This Office believes that no formal investigation is required to establish the facts
14 described in this Report. Accordingly, this Office recommends that the Commission
15 enter into pre-probable cause conciliation with the Respondents and approve the attached
16 conciliation agreement.

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⁹ The Committee's cash disbursements in excess of \$100 constitute non-qualified campaign expenses and are a basis for the Commission's determination that the Committee must make a repayment to the United States Treasury. 26 U.S.C. § 9038(b)(2).

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IV. RECOMMENDATIONS

1. Open a MUR in Audit Referral 03-03;
2. Find reason to believe that Keyes 2000, Inc. and William Leo Constantine, as Treasurer, violated 2 U.S.C. § 432(h), 2 U.S.C. § 432(c), 11 C.F.R. § 110.4(c)(3), and 2 U.S.C. § 441a(f);
3. Find reason to believe that Paul True violated 2 U.S.C. § 441a(a)(1)(A), send an admonishment letter and take no further action.
4. Enter into conciliation with Keyes 2000, Inc. and William Leo Constantine, as Treasurer, prior to a finding of probable cause to believe;
5. Approve the attached Factual and Legal Analyses;
6. Approve the attached Conciliation Agreement; and
7. Approve the appropriate letters.

Lawrence H. Norton
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4/19/04
Date

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Attachments

1. Audit Referral 03-03
2. Factual and Legal Analysis (Keyes 2000, Inc.)
3. Factual and Legal Analysis (Paul True)
4. Conciliation Agreement